IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7896 OF 2005

Mrs.Bharati Jagdish Mulchandani .. Petitioner

Versus

Dharamdas Sanmukhdas Kruplani

and Ors. .. Respondents

Mr.S.M.Oak i/b. Amber Joshi for petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd February 2006.

P.C.

. Heard Mr.Oak for petitioner. This matter was adjourned on the last occasion viz., on 12th

January 2006 to enable Mr.Oak to firstly place on record copy of sale deed by which petitioner, third party, has acquired right, title and interest, according to her, in the property covered by the decree. Secondly, time was sought to serve decree holder.

2. Today, affidavit proving service on the respondent is filed. All respondents, except respondent No.2 have been served.

3. With the assistance of Mr.Oak I have perused the sale deed which is dated 28th February 2003. It is executed by Suresh Malharrao Sukhtankar who is the predecessor in title of judgement debtor. The petitioner claims on the strength of this that she has independent right, title and interest in the subject property and that she can resist execution of the decree which is being executed in pursuance of Regular Darkhast No.6 of 2003.

4. Having perused the sale deed and the objection of petitioner, in my view, the executing court is right in rejecting the objection with regard to the possession warrant. Petitioner has purchased the property with sitting tenants and knowing fully well the existence of structures and the tenancy created by predecessor in title of judgement debtor. In such circumstances, petitioner cannot be permitted to obstruct the execution of the decree that is passed in favour of the decree holders. Petition dismissed.

5. However, it would be open for petitioner to take out such proceedings as are permissible in law against the judgement debtor as also against persons in occupation for protecting her rights under the sale deed.

(S.C.DHARMADHIKARI, J)